

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FISH, WILDLIFE AND PARKS**

**Call to Order:** By **CHAIRMAN DANIEL FUCHS**, on February 13, 2001 at 3 P.M., in Room 152 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Daniel Fuchs, Chairman (R)  
Rep. Joe Balyeat, Vice Chairman (R)  
Rep. George Golie, Vice Chairman (D)  
Rep. Keith Bales (R)  
Rep. Debby Barrett (R)  
Rep. Paul Clark (D)  
Rep. Ronald Devlin (R)  
Rep. Tom Facey (D)  
Rep. Nancy Fritz (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Larry Jent (D)  
Rep. Jeff Laszloffy (R)  
Rep. Diane Rice (R)  
Rep. Rick Ripley (R)  
Rep. Allen Rome (R)  
Rep. Jim Shockley (R)  
Rep. Donald Steinbeisser (R)  
Rep. Bill Thomas (R)  
Rep. Brett Tramelli (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Linda Keim, Committee Secretary  
Doug Sternberg, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 487, 2/09/2001; HB 492,  
2/09/2001; HB 520, 2/09/2001  
Executive Action: HB 228; HB 480; HB 487; HB 451

**CHAIRMAN FUCHS** stated there has been a request for a Committee Bill **EXHIBIT(fih36a01)** from **Marvin Mace** and **EXHIBIT(fih36a02)** from **Rich Clough, Fish Wildlife and Parks**. The bill would put a seven year waiting period for bull elk permits. Regardless of whether you have fulfilled that tag, you would be required to wait seven years to get another either sex tag. **CHAIRMAN FUCHS** asked the Committee to raise their hands if they were interested in doing a Committee Bill. Only two Representatives raised their hands, so no further action was taken on this topic.

#### HEARING ON HB 487

**Sponsor:** **REPRESENTATIVE DICK HAINES, HD 63, MISSOULA**

**Proponents:** **None**

**Opponents:** **None**

**Opening Statement by Sponsor:** **REP. DICK HAINES, HD 63, MISSOULA** stated that HB 487 started as an idea to allow Fish, Wildlife and Parks (FWP) to hold a lottery, whereby the winner would be able to purchase a license at the regular price for one of the exotic species, such as sheep, goat, moose, etc. They worked very hard on this to make a disconnect between the lottery and awarding the license; but it is illegal. This dates back to agreements the state signed with the Federal Government, and jeopardizes funding which comes from the Robinson Funds. The Federal FWP sits in on the final analysis of this issue, and they say that giving the right to buy the license is just another way of awarding the license. Even if it is indirect, they told us we cannot do this legally. This was just confirmed late yesterday. Since there was no way to notify everybody who might be coming to testify on this Bill, we went ahead with this much of this hearing. Please take this Bill out of further consideration.

**CHAIRMAN FUCHS** said that in light of **REP. HAINES'** testimony, prospective proponents were welcome to testify. Could proceed with the Hearing, but based on the testimony it was likely the Committee would Table the Bill at the end of the Hearing. Can bypass that part of the Hearing, go to Questions from the Committee and let **REP. HAINES** close. All signified agreement, and **CHAIRMAN FUCHS** thanked everyone.

**Questions from Committee Members and Responses:** None.

**Closing by Sponsor:** **REP. HAINES** said he knew there was a lot of interest in this, because it looked like a way to allow the counties to get some funding to take care of roads that were heavily impacted by hunting and fishing traffic. The best legal

advice here said it would work, but the people who have final judgement say it won't. He thanked everyone for their time.

**EXECUTIVE ACTION ON HB 487**

**Motion/Vote:** REP. GUTSCHE moved that HB 487 BE TABLED. Motion carried unanimously.

**HEARING ON HB 492**

**Sponsor:** REPRESENTATIVE PAUL CLARK, HD 72, TROUT CREEK

**Proponents:** Chris Smith, Fish Wildlife and Parks  
Tom France, National Wildlife Federation  
Steve Pilcher, Montana Stock Growers  
Ken Blundt, MT Prairie Dog Working Group, Phillips  
County Ecosystem Action Council  
Steve Roth, Land Manager from Big Sandy  
Rod Boland, Zortner Business People  
Ken Maloy, Council for Montana Dept of Agriculture  
Jonathon Proctor, Predator Conservation Alliance  
Jean Nelson-Dean, Bureau of Land Management  
Kevin Chappell, Department of Natural Resources  
Carol Lambert, Women Involved in Farm Economics  
Nancy Schlepp, Montana Farm Bureau  
Troy Blundt, Phillips County Commissioner  
Janet Ellis, Montana Audubon  
Bob Stevens, Montana Grain Growers  
Jeff Barber, Montana Wildlife Federation  
Jean Johnson, Montana Outfitters and Guides Assn.  
Mat Millenbach, Bureau of Land Management (written)

**Opponents:** Gary Marbut, Montana Shooting Sports Assn.  
REP. DEBBY BARRETT, HD 34, DILLON

**Opening Statement by Sponsor:** REP. PAUL CLARK, HD 72, TROUT CREEK said HB 492 is an act clarifying the authority of the Department of Fish, Wildlife and Parks to manage the prairie dog as a species in need of management. It does not eliminate shooting prairie dogs, it does not remove the landowner's ability to control prairie dogs on his property. It is a step toward keeping local control in species management. Information regarding prairie dogs is in **EXHIBIT(fih36a03)**. Initial concern regarding prairie dogs had to do with its link to the black footed ferret and its recovery. They are dependent on the prairie dog and are currently on the endangered species list. The Montana Prairie Dog Working Group, which is made up of Montana

ranchers, conservationists, and government departments, and was established in 1996, began a prairie dog conservation effort in 1999. The National Wildlife Federation petitioned the US Fish and Wildlife Service to list the black tailed prairie dog as threatened under the endangered species act. In 1999, a multi-state working group was convened to plan future management and jointly develop state management plans. Their goal is to prevent prairie dogs from being listed under the endangered species act. In February 2000, FWP issued a finding of warranted, but precluded. This determination was based on the fact that other species also awaiting listing are in greater need of protection. There are a lot of species besides the black footed ferret that are dependent or inter-dependent on prairie dogs. The burrowing owl is an example of an animal that uses prairie dog burrows. This is not a social services bill; we are not trying to take something from the level of vermin and bring it up to a level that is recognized as a real animal. We have a lot of agencies and landowners on board. Has amendments proposed by the stock growers that he will adopt as his own **EXHIBIT(fih36a04)**.

**Proponents' Testimony:**

**Chris Smith, Fish, Wildlife and Parks** presented written testimony **EXHIBIT(fih36a05)**. Due to time constraints, he presented an abbreviated version in his remarks to the Committee. He stated the reason they have brought this statutory change is because there is some question as to whether or not FWP can move forward and hold up their side of the implementation of a prairie dog management plan. In order to do that, prairie dogs have to be declared a non-game species in need of management. Under existing statute, we can do that for any species that is otherwise classified in statute. Prairie dogs are classified as a rodent pest in agriculture statutes. This Bill clarifies our authority to designate prairie dogs as a non-game species in need of management, so that we can move forward in partnership with the rest of the prairie dog working group and implement the plan.

**Tom France, National Wildlife Federation** presented written testimony which he followed in his remarks to the Committee, **EXHIBIT(fih36a06)**. He also presented a September 12, 2000 Draft of the **Conservation Plan for Black-Tailed and White-Tailed Prairie Dogs in Montana EXHIBIT(fih36a07)** and the **Petition for Rule Listing the Black-Tailed Prairie Dog As Threatened Throughout Its Range EXHIBIT(fih36a08)**.

**Steve Pilcher, Montana Stock Growers Association, Montana Public Lands Council and the Montana Association of State Grazing Districts** supports HB 492. These three organizations represent 4,000 ranchers from all over the state whose livelihood depends

on management of natural resources. They are willing to acknowledge that prairie dogs need conserving, for the benefit of the State of Montana, while many merely consider them a pest. We feel that HB 492 does clarify the role of the state agencies that are involved and that are key to this issue. We also want to remind you of the role private landowners will play in the success of preservation of this species. We would offer one additional amendment for your consideration, **EXHIBIT (fih36a09)**. This would deal with the recognition that it is imperative that private property owners retain the right to control prairie dog growth in areas where their presence just cannot be tolerated.

**Ken Blundt, Montana Prairie Dog Working Group** said they have been charged with the task of developing a state management plan. Case history has shown that in some instances, states that develop management plans receive exemptions from the listing; where in theory, these kinds of plans if they are good enough, prevent species from being listed. Speaking as a landowner and as Chairman of the Phillips County Prairie Ecosystem Council, he has been involved in prairie dog advisory groups for twenty years. The prairie dog population in Phillips County has risen from low levels in 1930 to high levels in 1988, with the plague back down, and now at the same levels as in 1988. Have 100,000 acres in Montana, or 156 square miles of prairie dogs. Doesn't feel this legislation is necessary to protect the prairie dogs, but it is necessary so we can show that the state is trying to do something. If we do it carefully, we can maintain our need to control prairie dogs, yet provide assurances to the service that we will want prairie dogs in Montana. Is in favor of the Bill with the amendments suggested.

**Steve Roth, Land Manager from Big Sandy** said he is in favor of HB 492. A recent GPS Survey this fall showed 2% of the lands he manages have prairie dogs on them; it costs over \$2.00 per acre. Supports this legislation with the last amendment that was handed out. This could have a positive effect in Montana.

**Rod Boland, Zortman Business People**, said prairie dog shooting as a recreational sport is essential to Zortman's economy and the survival of cafes, stores, motels and bars. They are dependent on the dollars brought in by the sport. Prairie dog shooters not only spend dollars in their 5-10 day stay; we have shooters come from all over the U.S. and several foreign countries. Is a proponent of this Bill as the best way to keep state control and a balance in management considering all aspects of agricultural, economic, sportsman and environmental issues.

**Ken Maloy, Council for Montana Department of Agriculture**, appearing on behalf of **Ralph Peck** who was unable to come. In

1946, the legislature gave responsibility to the Department of Agriculture to help agricultural producers manage pests, including the prairie dog, and we have been doing so ever since. We were included in the discussions with FWP and we had input into HB 492. We support it because it allows the department to continue providing its statutory service to the producers, as long as it is consistent with any plan adopted, and requires Department of Agriculture approval.

**Jonathan Proctor, Predator Conservation Alliance, from Bozeman.**

Stated that most of the issues have already been discussed, and presented written testimony **EXHIBIT(fih36a10)**. Has been involved in prairie dog issues and has helped relocate prairie dogs from ranching lands where they didn't want them, to wildlife refuges where they desperately needed them. Has helped survey prairie dog towns, helped make habitat maps for use by FWP and several tribes in Montana for prairie dog actions. Predator Conservation Alliance also petitioned to list the black tailed prairie dog as a threatened species. They petition with lynx, and wolverine. Brings this up to show the huge range of opinion of the people that support this Bill. This Bill is very important in solving the prairie dog issue, not just for Montanans, we have 10 other states that have a vested interest. Future listing of species dependent on prairie dogs, most notably the burrowing owl and the mountain plover, will also be avoided. This could be the best thing that Montana can do to prevent future listing of wildlife in this region.

**Jean Nelson-Dean, Montana Bureau of Land Management (BLM)** stated she brought a letter from the State Director of Montana BLM, **EXHIBIT(fih36a11)**. They support the Bill, as it would provide the necessary regulatory mechanisms for conservation of the species and would support FWP as the appropriate regulatory agency.

**Kevin Chappell, Department of Natural Resources and Conservation,** said their agency manages four million acres of school trust land classified as grazing. Hope to continue working to develop a conservation plan that maintains the viability of the species but yet recognizes the need of the landowner and land managers to be able to control prairie dogs on a case by case basis. Supports the legislation and the amendment that has been offered.

**Carol Lambert, Women Involved in Farm Economics,** said they support HB 492 with the strong amendment to protect property rights.

**Nancy Schlepp, Montana Farm Bureau** said they support HB 492.

**Troy Blundt, Land Owner and Phillips County Commissioner** said he is in favor of HB 492 as amended.

**Janet Ellis, Montana Audubon;** said, "me too".

**Bob Stevens, Montana Grain Growers Association** said they support the Bill as amended.

**Jeff Barber, Montana Wildlife Federation,** said they support the Bill.

**Jean Johnson, Montana Outfitters & Guides Association** said they also support the Bill.

**Opponents' Testimony:**

**Gary Marbut, Montana Shooting Sports Association, Western Montana Fish & Game Association, Montana Women's Shooting Association, and the Big Sky Practical Shooting Club** said they are concerned this is another example of federal blackmail that the legislature sees very commonly. US Fish and Wildlife (USFW) says they find rationale in the endangered species act to list as endangered species and regulate, because it is on the brink of extinction, some animal of which there are ten million members in existence. Yes, it does have a plague come through and wipe out or knock down small populations. However, they are so prolific they breed back their original populations in very short order. Concerned about long term effect on sportsmen and ability to shoot these rodents as people have been able to do for years. Concerned about the impacts on landowners. Appreciate that stock growers and landowners have looked at the Bill and like the Bill better with the Amendments. Some proponents have said this won't be a problem; there is nothing about not shooting prairie dogs in this Bill. Yet you heard Mr. France testify that he was the initial advocate for this, he wrote the petition to USFW, and he testified that in response to that, the State of Colorado has banned shooting prairie dogs. Once this regulatory process begins, the day will come when in order to shoot prairie dogs, you will have to have a license and you have to obey certain seasons. Some places you won't be able to do it at all, other places where you will be able to do it only on a very limited basis, and it will get more complicated. Understands it is difficult to resist this federal blackmail on things like social security numbers on hunting and fishing licenses, where it could conceivably cost the state huge amounts of money. This sets a bad precedent. If there is anything else the Feds want to compel in terms of conduct, if this Bill passes, all they will have to do is tell FWP that unless you do what we want, we will take this out of your hands. We need to retain some prerogatives in

Montana under the Fifth Amendment. Appreciates the fact that the Amendments that have been submitted to this Bill probably improve it, still isn't sure that makes it a good idea or good public policy and would ask careful consideration. Is not sure this is something Montana really needs. Doubts that the current Federal Government is very likely to list as endangered, an animal that has the millions of numbers that the prairie dog has.

**REP. DEBBY BARRETT, HD 34, DILLON** said she is in opposition to this legislation because on the first WHEREAS, it is to insure that a viable prairie dog population is maintained in the state for long terms. Attended a grizzly bear meeting last fall in her district, and that is their goal too. This is the concern. If ten million prairie dogs are not viable, what can we expect of a viable population. What can they do to us in the future?

**Questions from Committee Members and Responses:**

**REP. SHOCKLEY** asked if FWP could already do everything in the Bill? **Chris Smith, FWP** said their concern is FWP can designate any species in Montana as a non-game species in need of management if that species is not otherwise classified in statute. Prairie dogs are classified under the Department of Agriculture statute as a rodent pest, so there is some question whether FWP can designate prairie dogs as a non-game species in need of management.

**REP. RICE** asked for an estimate of how much money has been spent on this, between the working group, your agency, etc. since the beginning of the management issue? **Chris Smith** said that approximately \$200,000 over the past five years would cover costs associated with surveys, as well as the supporting work with the Prairie Dog Working Group (PDWG). **REP. RICE** said, then in the future if people come out to shoot gophers on our ranch, are they going to be in violation of the law? **Chris Smith** said no, as a non-game species, prairie dog shooters would not need to have a license. As to potential restrictions, the clear consensus from PWDG would be to apply seasonal closure in May through June on federal public land only, and that there is no need or justification for closures on private land. Private landowners will maintain flexibility to manage prairie dogs on private land as they see fit. **REP. RICE** asked if in the future FWP would be out on their ranch checking out how many prairie dogs are out there, or what would they do? **Chris Smith** said he would first emphasize that FWP recognizes and respects the rights of private landowners to control access to the public, as well as the agency, so any effort they would take on private property would be with the consent of the landowner. Have worked with many landowners around the state to improve their understanding of the



numbers and distribution of prairie dogs, because the more prairie dogs that are found, the better we can argue that listing the species is not warranted.

**REP. BALYEAT** asked about the interplay between the first WHEREAS clause that says Montana has a responsibility to ensure a viable prairie dog population is maintained in the state, and the fourth WHEREAS clause which talks about the black tailed prairie dog being considered to be on the endangered species act. Is there something in the endangered species act that says we have to maintain a viable prairie dog population in each state, or do they look at the 11 state region? Is it possible that the other ten states might support enough of a prairie dog population that it wouldn't be listed? **Chris Smith** said the way USFW applies an endangered species act, they do not recognize state boundaries in making listing decisions. It is theoretically possible that they could determine prairie dogs were in fact secure and not warranted for listing, because there were sufficient numbers in the other ten states and there were none in Montana. In reality, the current situation is the opposite; prairie dogs have been extricated in several states where they formerly existed, and Montana still has a healthy population. In spite of this fact, Montana is still caught up in the overall listing calculation of USFW because they look at the big picture.

**REP. BALYEAT** asked about the basis for the first WHEREAS clause; is that responsibility based on a moral obligation or because you're convinced that if we don't insure it, it will trigger the endangered species act? **REP. CLARK** said he felt comfortable with this being in the WHEREAS clauses, based on the fact that he believes we should protect all of our wildlife. Prairie dogs are not classified as vermin pests; that is fine for practical purposes on farms and ranches. But the other side of that is prairie dogs are linked to other species such as the black footed ferret, burrowing owls, ferruginous hawks, mountain plovers. Doesn't feel we should have to be reactive to threats from the federal government in order to protect all the wildlife species in Montana. **REP. BALYEAT** said, to clarify, in the first WHEREAS clause it talks about a viable prairie dog population, and on Line 17, it talks about the black tailed prairie dog being warranted for listing on the endangered species act. When we talk about these millions of prairie dogs, is there some distinction about the black tailed prairie dog, or are they all black tailed? **REP. CLARK** said the prairie dogs in most of Northern Montana are black tailed; there is a small population of white tailed prairie dogs in Southern Montana. Specifically what we are talking about here is the most common one. They are different species of prairie dogs that act differently and have different habits and different patterns of communication, etc.

FWP has a statute in existence now, 87-5-103 which declares it is a state policy to insure perpetuation of non-game wildlife as members of ecosystems. Unfortunately, we have reached a point where ecosystems, along with environmentalists has become filthy language in Montana. Reminds Committee that WHEREAS clauses do not go into law.

**REP. LASZLOFFY** asked about the chronology of the events leading to the ban on shooting prairie dogs in Colorado? **Tom France, NWF** said the Colorado Fish and Game Commission acted on their own two months ago to close down shooting prairie dogs in Colorado. It was a commission action, it was not recommended by the department as far as he knows. The commission looked at the situation in Colorado, took public testimony, and made the decision. **REP.**

**LASZLOFFY** asked why this was done? **Tom France** answered, there is concern along the front range in Colorado that prairie dogs are disappearing because of an urban population that is interested in prairie dog shooting. Would respond that it is an example of a state making a decision based on the information available to those state officials. Those are the kinds of decisions we are supporting through this legislation. We believe the states can and should be playing a lead role in these kinds of management issues. That doesn't mean every state should choose the same course, Colorado has chosen its course. Montana, North Dakota and Wyoming are on different trajectories and are looking more to having the agencies move forward with professional management.

**REP LASZLOFFY** asked if the ban was statewide on all pieces of land? **Tom France** said he could not speak to that, he does have a copy of the press release that the Colorado Division of Wildlife issued, would be happy to make it available to the committee. The National Wildlife Federation did not take a position on that action. Could research it and get details.

**REP. GALLUS** asked for clarification of species, what he calls a red tailed ground squirrel might be considered a gopher. **Chris Smith** said prairie dogs are a different species, they are not gophers. This Bill does not address gophers, it only addresses the black tailed prairie dog.

**REP. RIPLEY** asked if there is anything in the Bill that prohibits prairie dogs from being listed on the endangered species list?

**Chris Smith** said he doesn't know of any way that the state by statute could prevent a federal action, per se. A decision by the federal government to list or not list prairie dogs is a separate and independent action taken by USFW and the state can adopt a statute to agree with that. Our goal is to put the state in the best position, so that when USFW looks at state regulations and specifically evaluates one of the five criteria that they are required under the endangered species act to look at, that they

find that Montana along with all the other states does now have adequate regulatory mechanism in place to conserve, manage and control. **REP. RIPLEY** asked if there was anything in the Bill that would preclude having the prairie dog listed? **Chris Smith** said there is not. Doesn't see any way the state, as a matter of law, could do this.

**REP. THOMAS** asked what the status of the black footed ferret? **Chris Smith** said it continues to be an endangered species. The goal of the recovery program was to establish a minimum of two adult populations in each of several states, including Montana. At this point, there is one such population in the state. Attempting to re-establish ferrets at Fort Belknap through a cooperative project between FWP and the tribes. **REP. THOMAS** asked how important this recovery program's future is, as it involves the prairie dog in this area? Understand it has not been very successful, is that right? **Chris Smith** said the black footed ferret recovery program has struggled both in Montana and Wyoming for several reasons, disease affected some of the captive breeding animals, plague in the case of Fort Belknap ferrets, and the fact that ferrets were at such a low point before they initiated recovery efforts. **REP. THOMAS** asked what effect this would have on grazing on public lands? **Chris Smith** answered this proposed statute change would have no effect on grazing on either public or private lands. It refers to FWP authority to regulate prairie dogs, and we don't regulate grazing.

**REP. DEVLIN** asked what would happen if we changed the category to say "species in need of management" and left it under just the Department of Agriculture? **Chris Smith** said he would have to look more in depth at the Department of Agriculture statute to see if that would fit. I would clarify one aspect of your question, this statute would not change the designation within the Agriculture statute; they would still be designated as vermin pests, and the Department of Agriculture would retain all the statutory authority that they have. It simply eliminates any question of whether this species can be designated, at the same time, as a non-game species in need of management under FWP statutes.

**REP. BALES** asked how many prairie dogs there are in Montana? **Chris Smith** said that they base their estimates on acres that are occupied habitat. Can provide the information on current status and distribution, but doesn't have the information with him. **REP. BALES** asked, then you do have a current number of acres that are presently occupied by prairie dogs? Is it possible in this management plan, to say those are sufficient acres and we should not have any more acres in the state? **Chris Smith** said yes. The population goals that are established in the plan define a

minimum level, as well as an optimal level, which is within the historic range. Controlling and limiting the populations so they don't simply expand to every place they possibly could needs to be part of managing them.

**Closing by Sponsor:**

**REP. CLARK** asked the Committee to look at the Bill. People often have an emotional response, an attitude, about the place of prairie dogs in our society. Refer to Page 2, Lines 24 and 25, "conserving populations of wildlife consistent with other uses of land and habitat". That is the definition of management that did not exist prior to this Bill coming forward. Management used to mean increasing the numbers of individuals within species and population of wildlife up to the optimum carrying capacity. Obviously, that won't work with prairie dogs. There are compromises that have been made on this Bill. Refer to Page 3, Lines 2-6; we are redefining the role of the prairie dog in terms of species that is being managed. We are keeping in statute, everything that is currently in statute that controls prairie dogs as pests. We are managing them in accordance with rules that are already in place and with statutes that are already in place, as provided by the Department of Agriculture Title 7, Chapter 22, and Title 80, Chapter 7. We are basically saying FWP and the Department of Agriculture can get together and define statewide where there are certain populations, especially ferret dependent communities, that need protection. Or, the time may come when we do need a season to protect certain populations in certain areas. Starting with federal lands is a good place to do it. Keep in mind, we are talking unlimited shooting of prairie dogs. In the 1800's there was unlimited shooting of bison, elk and deer and it took a long time, a lot of money, and a lot of effort from sportsmen to bring some of these species back off the endangered species list to where we have the kind of hunting opportunities that we have today. Encourages everyone to be open minded on this issue and open to compromise.

Close Hearing on HB 492.

**HEARING ON HB 520**

**Sponsor:** REPRESENTATIVE PAUL CLARK, HD 72, TROUT CREEK

**Proponents:** Gary Marbut, Montana Shooting Sports Association,  
Western Montana Fish and Game Association, Montana  
Women's Shooting Association, Big Sky Practical  
Shooting Club, National Rifle Association  
Ty Marbut, Sixth Grader, Self

**Rich Clough, Fish, Wildlife and Parks**

**Michael Sherrard, Self**

**Jean Johnson, Montana Outfitters and Guides Assn**

**Jeff Barber, Montana Wildlife Federation**

**Opponents:**

**Bob Vogel, Montana School Boards Assn.**

**Inga Nelson, Montana Education Assn-Montana  
Federation of Teachers (MEA-MFT)**

**Opening Statement by Sponsor: REP. PAUL CLARK, HD 72, TROUT CREEK**

said HB 520 is permissive. It is not telling school boards what they can and cannot do. HB 520 is simply making a strong statement in support of Montana's heritage. **REP. CLARK** said he is an educator who looks at education differently, less narrowly, and more flexibly. He has a holistic sense of education. This Bill has been brought forward to emphasize that time with family out in the field during hunting season is coveted. His most free time is then; would consider it sad if there were any impediment. HB 520 makes a statement that it is desirable that kids should leave school, take up to three days to spend time in the field with their parents, relatives or friends. Or, spend time taking a gun safety class. If we take a step with this, sending a message of support to the schools, it would be up to the schools to adopt it. Most schools have a limit of 10 days absence, whereby you could potentially lose credit after 10 days of being absent from school. Would hate to think that if his son got sick for a week at the beginning of school, would only get to go hunting with him for three days, for fear of his losing credit.

**Proponents' Testimony:**

**Gary Marbut, Montana Shooting Sports Association, Western Montana Fish and Game Association, Montana Women's Shooting Association, Big Sky Practical Shooting Club,** said he has a letter from the National Rifle Association **EXHIBIT(fih36a12)** supporting this Bill.

We think this Bill is consistent with Montana's culture, getting kids to have a feel for hunting and the outdoors, and the ecology of Montana is very important to the education of any child in Montana. The Bill does not compel the schools, we are simply letting them know that it's okay if kids go hunting up to three days, insuring that they will get the funding they need for up to those three days. It is a point of clarification, and it may not be important this year. But once this is on the books, 20 years down the road, it will become an important part of Montana culture and heritage that we are a state where we actually recognize the educational benefits of kids having a chance to get out and go hunting. Encourages the Committee to pass HB 520.

**Ty Marbut, Sixth Grader from Butte**, said he has gone through hunter safety education, has a hunting license and urges support of this Bill. When kids get educational opportunities when they usually would be in school, it may even be more interesting, because a lot of people don't pay attention in school. It is an educational experience to be out hunting; he has learned about survival in the outdoors, about habitat and ecology, about firearm safety, and also, it is a big part of Montana heritage and culture. Please support HB 520 as amended.

**Rich Clough, Fish, Wildlife and Parks** presented written testimony which he followed in his remarks **EXHIBIT(fih36a13)**.

**Mike Sherrard, from Shelby**, representing himself, said he is a hunter education and bow hunter education instructor, a black powder instructor for 4H; and has a degree in education. Feels this Bill is long overdue. The tradition that we need in Montana is to allow young people the opportunity to participate in a safe firearms activity and to continue to promote the outdoors by utilizing this Bill.

**Jean Johnson, Montana Outfitters and Guides Association (MOGA)** said this is a good Bill. For the last nine years, MOGA has put on a program where they take kids from the Big Brothers Big Sisters Chapters in Montana. These are kids that don't have an opportunity, don't have anyone to take them outdoors and teach them outdoor survival or what the wildlife needs to survive. It is a great opportunity to introduce kids to a part of what we all enjoy. We try to teach them that hunting is an honorable game management tool, so that when they grow up they will resist anti-hunter attitudes. They encourage outfitters to take kids out in the field whenever they can. **Jack Rich in Seeley Lake** sponsors an essay contest every year, where he has two winners that get a guided hunt. MOGA thinks this a good Bill, it allows the schools to make their own decisions about whether to participate or not.

**Jeff Barber, Montana Wildlife Federation**, has a letter from **Ron Moody** who is one of their board members and is a hunter education instructor **EXHIBIT(fih36a14)**. MWF asks for a DO PASS on the Bill.

#### **Opponents' Testimony:**

**Bob Vogel, Montana School Boards Association** said he knows a number of students in Montana who love the opportunity to get out with their family and hunt and enjoy the outdoors as much as he does. The basic problem with the Bill is it presents a slippery slope for the educationalist, and for school boards. People feel equally passionate about skiing, fishing, family vacations, etc.

When that long list starts coming before local school boards, it presents a dilemma. There are only 177 classroom days, and they already have numerous school related activities that pull kids out. Appreciates that this one in particular might be a great advantage to some of the students that want to participate in it. The school schedule does allow some longer weekends when there are holidays, vacation periods. It doesn't always fit well with hunting season, but that is the issue; that it presents a slippery slope. As mentioned, most school districts currently allow ten days of un-excused absence, and if a student is sick, they may not be able to go hunting, because there is the possibility of a reduction in credit. If they work with their teachers and their administrators they can overcome that, it's not something where they would be expelled or suspended from school, so the consequences are not that dire.

**Inga Nelson, Montana Education Association-Montana Federation of Teachers (MEA-MFT )** said they are opposed to HB 520. The concern is not with the particular release time for hunting or hunting education programs, but with increasing statutory release time in general. Each session, there are multiple Bills allowing or requiring release time. Each Bill takes away from instruction time in the classroom. The less time the teachers have with students, the less time they are able to teach. They believe that if students miss classroom instruction, that time should count towards their attendance record. Urges support of classroom instruction and not pass this Bill.

**Joe Lampson, on behalf of Linda McCullough in the office of Public Instruction** said hunter education, gun safety programs are welcome in Montana schools. They are a cheap venue for teaching hunter safety - after school, after hours, with certified instructors. Hunting culture plays an integral part. When his sons were in school, he took advantage of the 10 days allowed by the schools. He took the boys out of school when then had gotten permission from their teachers, when their assignments were complete, and their grades were up, and their teachers thought it would not interfere with their education. They went hunting, fishing, floating on rivers; by the age of 14, they were accomplished outdoors men. But, the primary rule at home was "school comes first". That's what this Bill starts to move us away from. Is most concerned with subsection 3 which gives hunting a special status beyond other activities. Boards can set it up so they get the 10 days, plus three more for hunting. Was able to get his kids through school, teach them how to hunt and fish, and still do these things. Should not have to have a special qualification that says this is for hunting, because it will go to skiing, soccer, golf, and whatever activities people like to do. Under constant pressure, need to make sure students

have enough time in the classroom to learn their basics and to take care of their academic education, as well as other school activities. Please oppose this Bill.

**Questions from Committee Members and Responses:**

**REP. RIPLEY** asked when hunter safety classes are conducted? **Rich Clough, FWP** answered usually in the fall, beginning in September, after school starts, to take advantage of availability of kids. The classes are held at night. Bow hunter education is usually on weekends. **REP. RIPLEY** asked if that might change if the Bill were passed? **Rich Clough** said that as far as availability of the courses, he didn't see that happening. Optional instruction may be allowed during school hours, but again it would be upon approval by a school board at the local level.

**REP. FACEY** asked where the 177 instruction days came from? **Bob Vogel** said it is 180 days in the calendar, but they have three PIR days that are student release days. Students aren't in classes those days, so subtracted those three days out. Depending on the grade, students are supposed to be in school 180 days, as well as a certain hour requirement. That was set up so that if you just went by hours, some schools may keep kids there for 10 hours, so they wanted to address that problem.

**REP. FACEY** asked for discussion on Line 23-24. What is 20-1-301, 20-1-302, 20-5-103, 20-9-311? **Joe Lampson** said 20-1-301 defines the school year, 20-1-302 talks about the school day, 20-5-103 is the compulsory attendance requirements in Montana, and 20-9-311 talks about the calculation of the A and B and how schools are reimbursed for student attendance. **REP. FACEY** said some schools in the state have a 10 days per semester policy, and the semester is 90 days. Is it in code where we give the districts that authority, or is that something the districts do on their own? **Joe Lampson** said it is left to the individual districts. The only thing in the code is the 10 consecutive days around the time they calculated the A and B. Then the students, if they were absent for 10 consecutive days, were deemed no longer enrolled. **REP. FACEY** asked where in the code it says the districts have the ability to set their own attendance policy for credit? **Joe Lampson** said it is 20-5-103 that talks about a child being absent because of illness, bereavement or other reasons prescribed by the policies of the trustees.

**REP. FACEY** asked if we should amend the Bill so they could get three days off when the salmon fly hatch flows through town too?



**REP. CLARK** said sure. We could do that. **REP. FACEY** asked, when an employer gets an attendance record from the school; your Bill allowed three more days to be tacked on. The kid was absent for those days, but the employer wouldn't know about it. Do you think that is unfair to the employer if they request the student releases those records? **REP. CLARK** said not at all, he considers this part of school. This is just as important as school, we're not taking time away from school, that is why it is in this Bill. **REP. FACEY** asked what standardized test this would appear on? **REP. CLARK** said what kind of standardized tests are reliable now?

**CHAIRMAN FUCHS** asked if the department has any statistics on the numbers of Montana kids that are hunting; and, on the resident Montanans, are the numbers increasing or decreasing? **Rich Clough** said he does not have the figures, but would provide them before executive action.

**CHAIRMAN FUCHS** said you stated in your testimony about the possibility of this being expanded to soccer, volley ball, etc., I don't see that in here, and was wondering if your intention with that is the same as where **REP. FACEY** was going with his expanding it to fly fishing? **Joe Lampson** said no, it was to make a point. Right now schools have lots of activities students should get involved in, and that constantly creates tension, as there are only so many hours in the day. In our opinion, what this Bill does is that folks with other legitimate interests will be making cases for soccer and baseball, etc. because of the family and educational benefits. Agrees that this is part of education; that education is all encompassing and doesn't just happen in the classroom. But this Bill sets precedent for those groups to come forward and make their case also. **CHAIRMAN FUCHS** asked if any of those were comparable to being part of our Montana heritage? Can you think of any others? **Joe Lampson** said with regard to Montana heritage, to look toward our Native American folks. Should we give extra release time above the 10 days to attend powwows? Powwows were here a long time before our particular culture. That is the kind of thing we will have to make decisions about. It is permissive in terms of the districts. The release time may not adversely affect the pupils attendance record, but those things have a way of getting in there, and all of a sudden you have 13 days, 16 days. That is what can happen.

**REP. RICE-FRITZ** said that many times as a teacher, we would receive a note from the Administration the next day that had an X, the student was not excused for whatever they were doing the day before. "A" the parents called them absent, or a number of codes that we had. One was an "S" for school related activities. The student went to play football, basketball, soccer, speech and debate team, all for the high school, that was considered a

school related activity and was not counted against their 10 days. **Joe Lampson** said those programs are commonly called extracurricular activities also. They are set up and administered by the schools. Schools also have the ability to set up a shooting program if they want to. **REP. RICE-FRITZ** asked if he would agree there are a certain number of students who would benefit just as much from the program that has just been described as from basketball, football, speech and debate? **Joe Lampson** said as a father of some sons who definitely did; they weren't in those programs. His job is to go to work and earn a living, and their job is to go to school and get an education, so they had to make some choices.

**REP. BALYEAT** said there have been comments that this is going to take away from the time spent on the education process. Refer to subsection 2 of New Section 1, lines 19-21 where it says a school district may require evidence of participation in hunter safety or require a report from a pupil participating in the program on the educational aspects of the hunter safety program, or hunting activity. If the local school district set up a policy that would give you up to three days off for a hunting activity, but would require a report on your activities, wouldn't you agree this isn't taking away from the educational experience, but might be a good educational activity? **Joe Lampson** said yes, he would hope that schools would require reports on what they learned. It has a role, but to put it into perspective; there are just so many hours in the day. We're concerned that we are starting to create a situation where people say, gee, why can't Johnny read?

**Closing by Sponsor:**

**REP. CLARK** said he has been a teacher in the public school system. He respects it and thinks it is important. School is in the top 2-4, but it does not come first. His relationship with his kids comes before school. The time taken off in the fall to go hunting is the most valuable time spent with his son. Education is physical ed, it is mental, it is emotional, it is spiritual. This time with his family is a provision for all those things. Has developed a respect for home schooling in Montana because as parents, we are our kids primary teachers. This is not on the same level as playing soccer, volley ball, fly fishing or going on vacation. The purpose here is not to undermine education, but to support it. Our educational community needs to broaden its educational paradigm. Education includes parents, it also includes alternatives that are not in our schools today.

**{Tape : 2; Side : A}**

**EXECUTIVE ACTION ON HB 228**

**CHAIRMAN FUCHS** stated that based on what happened at the FWP meeting on Friday, they eliminated the need for HB 228. They restricted fishing on the Beaverhead and the Big Hole through rationing, somewhat like we discussed. Will move a DO PASS and then ask for a substitute motion.

**Motion/Vote:** REP. FUCHS moved that HB 228 DO PASS. Motion carried unanimously.

**Substitute Motion/Vote:** REP. SHOCKLEY made a substitute motion that HB 228 BE TABLED. Substitute motion carried 18-2 with Fuchs and Laszloffy voting no.

#### **EXECUTIVE ACTION ON HB 480**

**Motion:** REP. GALLUS moved that HB 480 DO PASS.

#### **Discussion:**

REP. GALLUS said he decided it was not the right time to proceed with this Bill, so he would entertain that same motion. He stated that the overall management of the streams is something we have been working for a long time. It still isn't clear what the role of the commission is and what the role of the legislature is. This is something the legislature needs to keep in mind for the future. The fiscal note, **EXHIBIT(fih36a15)**, and fishing use distribution chart, **EXHIBIT(fih36a16)**, were distributed previously.

**Substitute Motion/Vote:** REP. GALLUS made a substitute motion that HB 480 BE TABLED. Substitute motion carried 19-1 with Gallus voting no.

#### **EXECUTIVE ACTION ON HB 451**

**Motion:** REP. SHOCKLEY moved that HB 451 DO PASS.

**Motion:** REP. GOLIE moved that AMENDMENT 01 TO HB 451 BE ADOPTED.

#### **Discussion:**

Legislative Staffer Doug Sternberg explains REP. GOLIE's Amendment 01, **EXHIBIT(fih36a17)**. This would simply insert five words in the title and on line 23. The person considered eligible during license year 2000, would also be considered eligible for the permit during subsequent license years.

**Motion/Vote:** REP. GOLIE moved that **AMENDMENT 01 TO HB 451 DO PASS. Motion carried unanimously.**

**Motion:** REP. GOLIE moved that **AMENDMENT 02 TO HB 451 BE ADOPTED.**

**Discussion:**

**Legislative Staffer Doug Sternberg** explained Amendment 02, **EXHIBIT(fih36a18)**, which inserts new language on page 3, lines 23-26 because of questions about the original wording, "performance based impairment". Also, on page 3, line 27, they added subsections (9), that certification must be on the form provided, and (10), that disagreements with eligibility determination should be referred to the voluntary board of review.

**REP. GOLIE** said the changes were mostly brought about by the people this affects. It will eliminate any controversy over who is eligible to receive a "hunt from the vehicle permit".

**REP. GUTSCHE** asked where the wording came from? **REP. GOLIE** said it came from the disabled people themselves.

**Motion/Vote:** REP. SHOCKLEY moved that **AMENDMENT 02 TO HB 451 DO PASS. Motion carried 19-1 with Fuchs voting no.**

**Motion:** REP. GOLIE moved that **HB 451 DO PASS AS AMENDED.**

**Discussion:**

**REP. LASZLOFFY** asked how upland bird hunting is done from inside a vehicle? From a practical point of view, how is this done?

**REP. GALLUS** said he had a wheelchair bound friend who hunts birds off his quad, which is set up with a rack for the barrel so he can ride and shoot.

**Motion/Vote:** REP. SHOCKLEY moved that **HB 451 DO PASS AS AMENDED. Motion carried unanimously.**

Executive Action Ends.

**ADJOURNMENT**

Adjournment: 5:40 P.M.

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REP. DANIEL FUCHS, Chairman

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LINDA KEIM, Secretary

DF/LK

**EXHIBIT (fih36aad)**